



Legal Brief

Lasting Powers of Attorney

Managing your affairs in later life can become more difficult and it is wise to nominate someone whom you trust to look after your affairs, should the time come when you become mentally or physically incapacitated.

What is a Lasting Powers of Attorney?

A Lasting Power of Attorney (LPA), which replaces the Enduring Power of Attorney, is a document that enables you to choose who you would like to manage your property, finances and general affairs should you become unable to manage them yourself. The document gives that person the measure of power that you define. The LPA comes into play either when you choose or when your mental health declines (subject to certain safeguards imposed by the Court of Protection).

Why should I create a Lasting Power of Attorney?

We often read or hear in the news of the importance of preparing Wills which determine where your assets would go when you die. Lasting Powers of Attorney are similarly important and can be very useful if you should become temporarily or permanently incapacitated, mentally or perhaps physically as a result of an illness or hospitalisation. It means that you can put control of your financial affairs and personal welfare matters into the hands of a family member or a trusted friend.

What exactly do LPAs cover?

The new LPAs can extend beyond dealing with your financial affairs to personal welfare matters and decisions, if you so wish. You will also be able to place restrictions on what exactly your Attorney can deal with, such as property or restricting medical decisions. But remember that LPAs must be registered with the Court of Protection before your Attorneys can act and this may take some weeks. Your Attorneys will have the power to decide on issues such as where you will live, your care and medical treatment. They may also give or refuse consent to the carrying out or continuation of medical treatment, according to your wishes, although they cannot act if you are still capable of making those decisions for yourself.

If you have already created an Enduring Power of Attorney (EPA), don't worry, your EPA remains legally valid but does not allow others to act in matters relating to your personal welfare.

What happens if I become mentally incapable and I haven't prepared an LPA?

If you haven't prepared a Lasting Power of Attorney and you do become mentally incapable, then your next of kin does not have an automatic right to manage your affairs for you. To be given such a right your next of kin or closest family member must apply to the Court of Protection to become your "Deputy." If you have no close family able or willing to take on the role a professional Deputy such as your solicitor can be appointed. Unlike LPAs where you can appoint more than one person to act for you, only one Deputy can be appointed by the Court of Protection. The process is longwinded, costly and stressful, so our advice to you is not to wait until you are beginning to lose the ability to manage your affairs before you consider making an LPA.

If I do not want to prepare an LPA but I am worried about my health and welfare decisions, what should I do?

As an alternative, you can prepare a "Living Will", otherwise known as an "Advanced Directive", which gives you the freedom to define medical care issues that you feel strongly about. This means that in the unfortunate event of terminal illness where you might be incapable of communicating your wishes, your Living Will would be able to state your preferences in cases such as not accepting blood transfusions or not wishing to be resuscitated. Living Wills however are not legally binding but intended to reflect your wishes in a medical situation. An LPA carries more weight and is legally binding.

What should I do next?

Don't leave your affairs to chance. Give Sheila or Shirah a call and we will be pleased to advise you or your family member at our premises or we can visit you at home, in the Basingstoke area.

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